

Report Brief

The U.S. Supreme Court and the Transformation of Juvenile Sentencing

Three United States Supreme Court decisions of the past decade have delineated the principle that children are developmentally different from adults in ways that matter for the fair punishment of juvenile offenders. The Court has prohibited the death penalty for juveniles and strictly limited the use of the sentence of life without parole—prohibiting the sentence for non-homicide offenses and, even for homicide, requiring courts to consider mitigating factors.

Some courts and legislatures have used the Court’s developmental framework to adopt further reforms in juvenile sentencing, including:

- Abolishing altogether juvenile life without parole (JLWOP).
- Putting additional restrictions on the use of JLWOP.
- Revising or prohibiting mandatory minimum sentences.
- Revising parole regulations for juveniles.

Similar reasoning can also apply to reforms addressing issues such as expungement of juvenile records, enhanced sentencing laws, and transfer laws.

The Supreme Court and adolescent development

Since 2005, the Supreme Court has transformed the constitutional landscape of juvenile justice. In three strongly worded opinions, the Court prohibited the death penalty for juveniles (*Roper v. Simmons*, 2005), barred the sentence of life without parole (LWOP) for juveniles convicted of a non-homicide offense (*Graham v. Florida*, 2010), and banned the use of mandatory LWOP sentences for juveniles even for homicide (*Miller v. Alabama*, 2012).

These opinions delineate a powerful constitutional principle: children are different, and these differences have implications for criminal punishment.¹ The principle, and the decisions applying it, are grounded in studies of behavioral and brain development that show adolescents to be less mature than adults in ways that make them less blameworthy (in legal terms, “mitigate their culpability”), less competent to participate in criminal proceedings, and more likely to change over time.² Although the Court directly addressed only the most serious crimes in its decisions,

the developmentally-based principle applies to all offenses committed by adolescents.

As a result, we now have a coherent framework, grounded in constitutional and criminal law as well as the science of adolescent development; this framework is influencing lawmakers and courts to think in new ways about the sentencing of juvenile offenders across a broad range of offenses. At its core, however, the framework is hardly revolutionary; it brings together the long-standing goals of the juvenile justice system: to treat youths fairly, promote positive development, and keep communities safe.

The Supreme Court decisions required many states to make certain changes in their juvenile sentencing laws: states that had allowed the death penalty for juveniles, permitted JLWOP for non-homicide offenses, or mandated a sentence of JLWOP for homicide have had to abolish those laws. But some courts and legislatures also have used the Supreme Court's framework as a springboard for reforms addressing a broader range of juvenile crime and punishment issues, as discussed below.

Abolishing juvenile life without parole

While some states have continued to use JLWOP, relying on individualized hearings to determine whether it is appropriate, others have found that the risk of error in applying the sentence is simply too high. For one thing, evaluating an individual's maturity (and thus his or her level of culpability) is impossible to do with certainty. For another, there is often pressure to look at the crime, not the offender, and to punish murderers and others who have committed serious crimes harshly regardless of their age. These arguments make a particularly strong case for abolishing JLWOP for felony murder, which results in a murder conviction even when the youth neither killed nor intended to kill the victim.

In light of these concerns, it is not surprising that several states have drawn the lesson that LWOP for juveniles is inherently problematic under the Eighth Amendment prohibition of cruel and unusual punishment. In response, they have abolished the sentence altogether. In Massachusetts, for example, the state's highest court concluded that juveniles'

reduced culpability makes LWOP a disproportionate sentence for *any* crime. Moreover, that court said, JLWOP is flawed because it denies the young offender the opportunity to reform, which research has shown most youths do as they mature.³

Reforming juvenile life without parole

The Court's conclusion in *Miller* that JLWOP should be uncommon, and its emphasis on the risk of an erroneous sentence, create a presumption of immaturity for juvenile offenders facing the sentence. This means states that retain JLWOP must do more than make it discretionary.

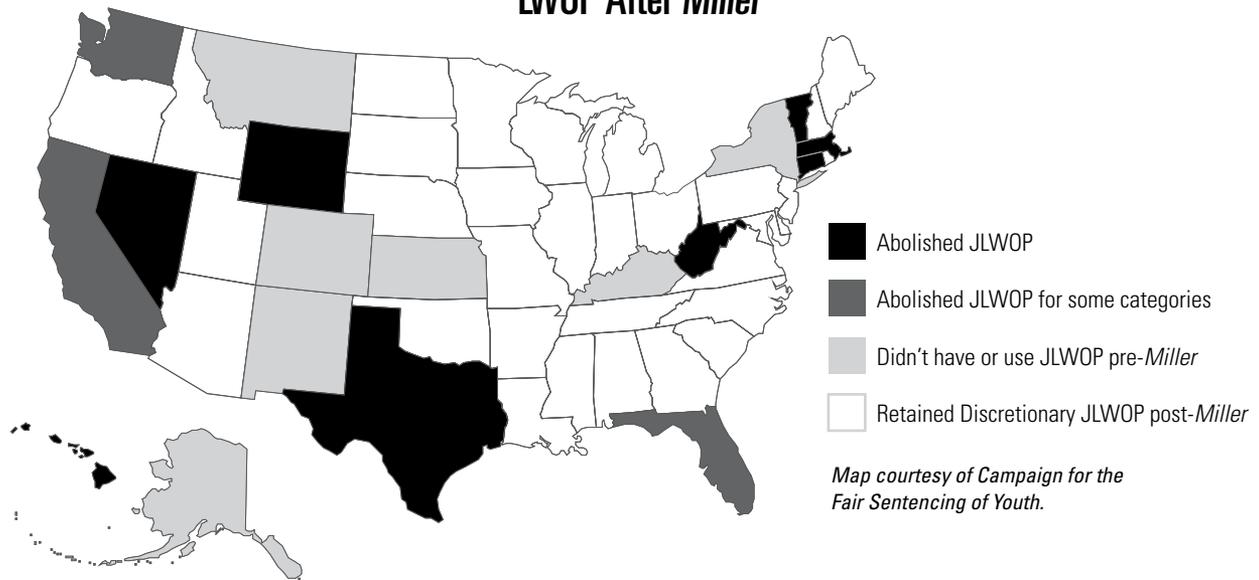
Prosecutors must prove that LWOP is an appropriate sentence for a particular juvenile in a sentencing hearing that considers the five mitigating factors described in the *Miller* decision:

1. Immaturity, impetuosity, less capacity to consider future consequences, and related characteristics that impair juveniles' ability to make decisions.
2. A family and home environment from which a child cannot extricate himself or herself.
3. The circumstances of the offense, including the role the youth played and the influence of peer pressure.
4. Impaired legal competency that puts juveniles at a disadvantage in dealing with police or participating in legal proceedings.
5. The youth's potential for rehabilitation.

Because these factors are based on developmental constructs, it is important that forensic child psychologists or psychiatrists be involved to inform the courts making sentencing decisions.

Even before the *Miller* decision, California had begun to reform JLWOP along developmental lines. The state passed a law allowing youths sentenced to LWOP to petition for resentencing after 15 years, allowing consideration of whether the prisoner had reformed and also of whether (in the aftermath of the crime) mitigating factors had been weighed fairly at sentencing.⁴ More recently, Florida has required courts to consider multiple developmental factors before sentencing a juvenile to life in prison, even with the possibility of parole.⁵

LWOP After Miller



Mandatory minimum sentences

In the 1990s, lengthy mandatory sentences became common in many states. But in light of the *Graham* and *Miller* decisions, some jurisdictions are reconsidering the use of these sentencing laws with juveniles. A number of courts have rejected lengthy sentences of juveniles that were the functional equivalent of LWOP—some extending beyond an individual’s life expectancy.

For example, after *Miller*, the Iowa Supreme Court struck down an order by the Governor commuting the sentences of all juveniles serving LWOP to life with parole eligibility after 60 years. The Court observed that subjecting juveniles to such a lengthy fixed sentence was a rejection of the fundamental principles that young offenders were less culpable than adults and that they should be given a meaningful opportunity to demonstrate reform.⁶ A year later, the same court found *all* mandatory minimum adult sentences to be unconstitutional for juveniles, noting that the reduced culpability of juveniles applies to all categories of juvenile offending.⁷

While not all courts will interpret *Miller* this broadly, states have other ways to approach minimum-sentence reform within the Supreme Court’s developmental framework. For example, they can provide individualized sentencing hearings for juveniles facing the possibility of lengthy minimum sentences. Or they can devise a system of minimum sentences for young offenders that are shorter than those imposed on adults.

Parole regulations

Several states have recently revised their parole regulations for prisoners sentenced as juveniles. For example, in states that have abolished LWOP for juveniles, youth convicted of murder are eligible for parole after serving between 15 and 40 years.⁸ Other states have created special juvenile offender parole boards, or instituted parole eligibility provisions for juvenile offenders convicted of a wide range of crimes.⁹

In some jurisdictions, the law directs parole boards to consider not only the offender’s current dangerousness and the extent of rehabilitation, but also his or her immaturity at the time of the offense and the circumstances surrounding the crime.¹⁰ Not surprisingly, this kind of retrospective assessment can be challenging. California’s comprehensive juvenile parole statute takes it a step further, requiring that appropriate measures for rehabilitation and reform be identified and discussed several years before parole eligibility.

Other sentencing reforms based on the developmental framework

A developmental approach to juvenile sentencing suggests several additional reforms, which are described briefly here.

Expungement. Young offenders’ criminal records can have a long-term impact on their ability to become productive members of society, excluding them from educational opportunities, jobs, voting, and public

housing. Minor offenses by juveniles are expunged in many states, and some provide a process for expunging more serious offenses. Some courts also adopted a developmental approach in rejecting lifetime parole or public registration for juvenile sex offenders.¹¹

Enhanced sentencing. “Three strikes” laws, and others that use previous offenses to enhance the severity of sentences for later offenses, have been criticized even for adult offenders. Some courts have found that this objection is amplified when the earlier “strikes” are juvenile offenses and likely the product of immaturity.¹²

The correctional environment. Because adolescents are especially susceptible to both positive and negative influences, the correctional setting in which they are placed is of great importance—both for the individual’s development and for decreasing recidivism. This has led a number of states to rescind laws that automatically transfer juveniles to criminal courts for serious offenses, and to place them in settings that have the potential to promote healthy development.¹³

Sustaining the momentum

While science, law, and public attitudes have converged to support recent reforms around juvenile sentencing, continued progress is far from guaranteed. The framework created by the Supreme Court, with its emphasis on adolescent immaturity as a key consideration in sentencing, is likely to be

resisted by some prosecutors and rejected by some courts, particularly when juveniles are convicted of serious crimes. In addition, public and political attitudes can quickly swing back to favor punitive policies, especially if violent juvenile crime rates—which have been relatively low for two decades— increase significantly. And just as the recession and tight budgets have made states receptive to less costly, developmentally based policies, an improved economy could undermine those policies.

There are a number of strategies that can help reinforce the current trend. For example, transfer laws that limit the category of transferable offenses and exclude younger juveniles limit the ability of prosecutors and courts to prosecute and punish juveniles as adults in high-profile cases. Requiring a cost-benefit analysis for new legislation encourages regulators to calculate the predicted financial costs of proposed changes and makes the process more deliberative. Legislative committees can also require reports that incorporate developmental knowledge and evaluate the likely impact of new laws on young lives, recidivism, and incarceration rates.

While none of these mechanisms guarantee that the Supreme Court framework will continue to define justice policy affecting juveniles, the experience of the past decade provides a good foundation for the future.

1. *Miller v. Alabama*, 132 S.Ct 2455, 2470 (2012).
2. Laurence Steinberg (2013). The influence of neuroscience on U.S. Supreme Court decisions involving adolescents’ criminal culpability. *Nature Reviews Neuroscience*, 14, 513-518.
3. *Diatchenko v Commonwealth*, 1 N.E.3rd270 (Mass. 2013).
4. Cal. Penal Code § 3070 (West 2011). Some prisoners are excluded under the statute.
5. Fla. Stat. Ann. § 921.1401 (West 2014); Fla. Stat. Ann. § 921.1402 (West 2014).
6. *State v. Ragland*, 836 N.W. 2d. 107 (Iowa 2013).
7. *State v. Lyle*, 854 N.W.2d 378, 400 (Iowa 2014).
8. Fla. Stat. Ann. § 921.1402(2) (West 2014); Mass. Gen. Laws Ann. ch. 265, § 2 (West 2014); Mass. Gen. Laws Ann. ch. 279, § 24 (West 2014).
9. Leanne Alarid, *Community Based Corrections*, 320 (10th Ed. 2014)(describing juvenile offender parole boards in several states).
10. W. Va. Code Ann. § 62-12-13b (West 2014).
11. *State v. Dull*, 2015 Kan. LEXIS 359 (2015).
12. 4th Cir case 2015
13. The Texas Court of Criminal Appeals has required individualized consideration of a juvenile’s attributes before transfer to adult court. *Moon v. State*, NO. PD-1215-13 (Tx. Ct. Crim. App 2014). A substantial number of states have reformed their transfer laws and made transfer more difficult, including Delaware (Del. SB 200); Colorado (SB 1271 (2012)); Maryland (SB 515 2014) and Ohio (SB 86 2011). The Campaign for Youth Justice maintains a list of statutory reforms. See *Legislative Trends*, at www.campaignforyouthjustice.org.

This brief is based on the report “The Supreme Court and the Transformation of Juvenile Sentencing,” prepared by Elizabeth Scott, Thomas Grisso, Marsha Levick, and Laurence Steinberg, and available at modelsforchange.net/transformation. For more information, contact Elizabeth Scott, Harold R. Medina Professor of Law, Columbia Law School, es2054@columbia.edu.

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